

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: John Jeffrey	Team: Squad #08	CCRB Case #: 202002649	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 04/05/2020 6:40 PM	Location of Incident: West 96th Street and Broadway	Precinct: 24	18 Mo. SOL 10/5/2021	EO SOL 5/4/2022	
Date/Time CV Reported Sun, 04/05/2020 7:10 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 04/10/2020 8:47 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Jacob Suarez	24230	933394	TB DT03

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Suman Basak	17208	967763	TB DT03
2. POM Tyler Perez	29473	965408	TB DT03
3. POF Leddys Castillo	14993	967803	TB DT03

Officer(s)	Allegation	Investigator Recommendation
A.POM Jacob Suarez	Discourtesy: Police Officer Jacob Suarez spoke discourteously to § 87(2)(b)	
B.POM Jacob Suarez	Abuse: Police Officer Jacob Suarez took a recording of § 87(2)(b)	
C.POM Jacob Suarez	Discourtesy: Police Officer Jacob Suarez spoke discourteously to § 87(2)(b)	
D.POM Jacob Suarez	Force: Police Officer Jacob Suarez used physical force against § 87(2)(b)	
E.POM Jacob Suarez	Abuse: Police Officer Jacob Suarez threatened to arrest § 87(2)(b)	
F.POM Jacob Suarez	Discourtesy: Police Officer Jacob Suarez spoke discourteously to § 87(2)(b)	

Case Summary

On April 05, 2020, § 87(2)(b) filed this complaint with IAB generating log § 87(2)(b). On April 10, 2020, the CCRB received this complaint.

On April 5, 2020, at approximately 6:40 p.m., inside of the West 96th Street and Broadway subway station in Manhattan, § 87(2)(b) was walking towards the West 96th Street and Broadway exit when he passed PO Jacob Suarez and PO Suman Basak of Transit Bureau District 03.

PO Suarez allegedly pointed at § 87(2)(b) and stated, “That’s the piece of shit right there,” § 87(2)(b) asked PO Suarez if he was talking about him. PO Suarez is alleged to have cursed at § 87(2)(b) and told him to exit the subway station (**Allegation A: Discourtesy**, § 87(2)(g) § 87(2)(b) then exited the subway station.

Approximately one minute later § 87(2)(b) reentered the subway station and walked up to PO Suarez and PO Basak, who were now joined by PO Tyler Perez and PO Leddys Castillo of Transit Bureau District 03. § 87(2)(b) began recording PO Suarez. PO Suarez allegedly pulled out his own cellphone and began recording § 87(2)(b) (**Allegation B: Abuse of Authority**, § 87(2)(g) PO Suarez allegedly then repeatedly cursed at § 87(2)(b) while telling him to leave the subway station (**Allegation C: Discourtesy**, § 87(2)(g).

§ 87(2)(b) walked towards the subway station exit, stopped and spoke to PO Suarez. PO Suarez walked over to § 87(2)(b) and pushed him two times, moving him out of the subway station (**Allegation D: Force**, § 87(2)(g).

Once outside of the station § 87(2)(b) asked PO Suarez if he just pushed him. PO Suarez said yes, and then threatened to arrest or summons § 87(2)(b) (**Allegation E: Abuse of Authority**, § 87(2)(g) § 87(2)(b) continued to yell and curse at PO Suarez from outside of the subway station. PO Suarez stated, “You’re talking so much shit” (**Allegation F: Discourtesy**, § 87(2)(g) § 87(2)(b) then walked away.

The investigation received PO Suarez’s BWC video and MTA Surveillance video footage (Board Reviews 1-6).

Findings and Recommendations

Allegation (A) Discourtesy: Police Officer Jacob Suarez spoke discourteously to § 87(2)(b).

Allegation (B) Abuse of Authority: Police Officer Jacob Suarez took a recording of § 87(2)(b).

Allegation (C) Discourtesy: Police Officer Jacob Suarez spoke discourteously to § 87(2)(b).

On April 5, 2020, at approximately 6:40 p.m., inside of the West 96th Street and Broadway subway station in Manhattan, § 87(2)(b) was walking towards the West 96th Street and Broadway exit when he passed PO Suarez and PO Basak.

According to § 87(2)(b) interview with the CCRB, as he passed the two officers PO Suarez pointed at him and said, “That’s the piece of shit right there” (Board Review 07). § 87(2)(b) asked PO Suarez if he was talking about him and PO Suarez said, “Get the fuck out. Keep it moving.” § 87(2)(b) replied that he could not have been speaking about him because they did

not know each other. PO Suarez stated that § 87(2)(b) knew who he was and stated, “Just keep it moving and get the fuck out of here.” § 87(2)(b) continued walking and exited the station.

Approximately one-minute after § 87(2)(b) left the subway station he returned. Two additional officers whom the investigation identified as PO Tyler Perez and PO Leddys Castillo, also of Transit Bureau District 03, had joined PO Basak and PO Suarez. § 87(2)(b) pulled out his cellphone and stated that he was recording PO Suarez because he had acted unprofessionally earlier. In response PO Suarez pulled out his cellphone and began recording § 87(2)(b). PO Suarez then told § 87(2)(b) “Now get the fuck out.”

In his interview with the CCRB PO Suarez stated that on the date of the incident he and PO Basak were standing by the subway turnstiles and saw § 87(2)(b) (Board Review 08). PO Suarez told PO Basak that § 87(2)(b) frequented this subway station and is known to ask people for swipes and to block the turnstiles. § 87(2)(b) overheard PO Suarez mention him and began yelling and cursing at the officers. PO Suarez could not recall exactly what § 87(2)(b) said, but that he claimed PO Suarez was targeting and harassing him.

PO Suarez told § 87(2)(b) that he was causing a scene and being disrespectful and that he had to leave the subway station. PO Suarez denied saying, “That’s the piece of shit right there,” “Get the fuck out. Keep it moving,” “Just keep it moving and get the fuck out of here,” or “Now get the fuck out.” PO Suarez did not recall cursing at § 87(2)(b) when he was inside of the subway station. PO Suarez stated that except for his BWC he did not make any recordings of § 87(2)(b).

MTA Surveillance footage captured the entirety of § 87(2)(b) interaction with PO Suarez inside of the subway station (Board Review 02, 03, 04, 05, 06, 09, and 10). The footage depicts § 87(2)(b) taking out his phone and pointing it at PO Suarez. The footage does not depict PO Suarez responding to this by taking out his own phone and pointing it at § 87(2)(b) like § 87(2)(b) alleged.

The BWC footage the investigation received of the incident does not capture PO Suarez’s initial encounter with § 87(2)(b) when he walked through the subway turnstile, only when he reentered the station and began recording PO Suarez (Board Review 01). During the footage PO Suarez is not depicted cursing at § 87(2)(b) while he is inside of the subway station, however there are moments when the footage does not capture any sound.

§ 87(2)(g)
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Allegation (D) Force: Police Officer Jacob Suarez used physical force against § 87(2)(b)

According to § 87(2)(b) after he reentered the subway station and was told again by PO Suarez to leave, he began walking toward the station exit. § 87(2)(b) then stopped and turned around. § 87(2)(b) told PO Suarez that he would leave the station on his own time. PO Suarez

continued to tell § 87(2)(b) to leave. § 87(2)(b) turned around and began walking towards the exit. When § 87(2)(b) was less than five feet away from the exit, PO Suarez placed both of his hands against his middle and upper back and pushed him out (Board Review 07).

According to PO Suarez, he told § 87(2)(b) multiple times to leave the subway station because he was yelling and cursing, which is in violation of the MTA rules (Board Review 08). § 87(2)(b) began to walk toward the station exit and then turned around and stood still while yelling and cursing at PO Suarez. PO Suarez walked over and pushed § 87(2)(b) out of the station by extending both of his arms with his palms facing outward. PO Suarez could not recall where on § 87(2)(b) he made contact. PO Suarez stated that there was foot traffic during the incident, but he did not know if any bystanders had stopped to watch or had mentioned anything about § 87(2)(b).

PO Suarez prepared a transit ejection report for the removal of § 87(2)(b) from the subway station (Board Review 11). In the report PO Suarez stated that § 87(2)(b) was removed for breach of peace and disorderly conduct.

In PO Suarez's BWC video entitled 2020-04-05_18-45-50.avi, at 00:30 seconds § 87(2)(b) curses at PO Suarez and then walks towards the station exit before turning around and continuing to verbally engage PO Suarez. The video ends with PO Suarez stating, "Keep walking" (Board Review 01 and 16).

In the beginning of PO Suarez's second BWC video entitled 2020-04-05_18-46-18.avi, PO Suarez walks up to § 87(2)(b) who is standing in front of the subway exit not moving (Board Review 01 and 17). At 00:08 seconds PO Suarez pushes § 87(2)(b) in the upper right shoulder causing him to take a few steps backwards approximately three feet towards the exit. At 00:10 seconds § 87(2)(b) begins turning around and walking out the door and PO Suarez pushes his backpack causing him to take a few steps approximately two feet through the exit and outside of the station.

Both BWC footage and MTA Surveillance footage show two bystanders walking by and going through the subway turnstiles during the incident. None of the bystanders reacted to or stopped to watch § 87(2)(b) (Board Review 02, 03, 04, 05, 06, 09, and 10).

According to the MTA Rules of Conduct and Fines § 1050.7 Disorderly conduct, "No person on or in any facility or conveyance shall: (I) conduct themselves in any manner which may cause or tend to cause annoyance, alarm or inconvenience to a reasonable person or create a breach of the peace" (Board Review 14).

According to People v. Baker, 20 NY3D 354 (2013), the New York Court of Appeals ruled that a verbal exchange between a single civilian and officers does not constitute public harm if the civilian's statements are exclusively targeted at the officers, who are trained to defuse situations with emotionally distraught civilians (Board Review 29).

According to People v. Weaver, 16 N.Y.3d 123, the New York Court of Appeals ruled that, a person can only be guilty of disorderly conduct when a dispute they are having becomes "a potential or immediate public problem." The court stated that when, "assessing whether an act carries public ramifications, relevant factors to consider are the time and place of the episode under scrutiny; the nature and character of the conduct; the number of other people in the vicinity; whether they are drawn to the disturbance and, if so, the nature and number of those attracted; and any other relevant circumstances" (Board Review 18).

According to Patrol Guide Procedure 212-20 Ejection from New York City Transit Property officers are to “Use no more force than is necessary to effect the ejection, if passenger refuses to leave.” The Patrol Guide clarifies that “Generally, grasping the upper arm and forearm to escort the person off the system is considered using reasonable force necessary to effect the ejection” (Board Review 15).

§ 87(2)(b) and PO Suarez’s accounts of what led up to § 87(2)(b) initial ejection were substantially different. While the MTA surveillance footage showed that § 87(2)(b) appeared to approach the officers first, it’s unclear what he was saying or how loudly he was speaking. However, even if § 87(2)(b) was cursing at PO Suarez § 87(2)(g) § 87(2)(b) dispute with PO Suarez did not cause a crowd to gather, impede pedestrian traffic, or generate any reactions from either of the two passing bystanders. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

Allegation (E) Abuse of Authority: Police Officer Jacob Suarez threatened to arrest § 87(2)(b).

Allegation (F) Discourtesy: Police Officer Jacob Suarez spoke discourteously to § 87(2)(b).

§ 87(2)(b)

According to § 87(2)(b) after he was forced out of the subway station, PO Suarez stated, “My boss told me not to worry about you because you is a piece of shit. You ain’t worth shit” (Board Review 07). PO Suarez then stated, “Keep moving before I make it worse.”

At 00:29 seconds PO Suarez’s BWC video depicts § 87(2)(b) asking PO Suarez if he put his hands on him (Board Review 01, 16, and 17). PO Suarez replied, “Yep.” § 87(2)(b) then called PO Suarez a coward and PO Suarez stated, “I could do so much more. At 00:56 seconds PO Suarez stated, “Get out of my face, you’re talking so much shit” PO Suarez’s BWC video does not depict him saying any other discourtesies.

In his interview with the CCRB PO Suarez identified himself as the person speaking in his BWC video (Board Review 08). PO Suarez stated that when he said, “I could do so much more,” he was referring to the fact that he could have arrested § 87(2)(b) or issued him a summons for disorderly conduct, because he was yelling, being loud, and being obnoxious. PO Suarez said there was nothing else § 87(2)(b) was doing that constituted disorderly conduct.

PO Suarez denied saying, “My boss told me not to worry about you because you is a piece of shit. You ain’t worth shit.” PO Suarez acknowledged saying, “Get out of my face, you’re talking so much shit.” When asked why he used the word “shit,” PO Suarez stated that he used it because § 87(2)(b) was talking a lot of nonsense.

PO Suarez’s BWC video footage depicted § 87(2)(b) cursing at PO Suarez before he was ejected from the subway station. (Board Review 01). Both BWC footage and MTA Surveillance footage show two bystanders walking by and going through the subway turnstiles during the incident, none of the bystanders reacted to or stopped to watch § 87(2)(b) (Board Review 02, 03, 04, 05, 06, 09, and 10).

According to New York Penal Law Section 240.20 Disorderly Conduct, “A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or

recklessly creating a risk thereof:

1. He engages in fighting or in violent, tumultuous or threatening behavior; or
2. He makes unreasonable noise; or
3. In a public place, he uses abusive or obscene language, or makes an obscene gesture; or
4. Without lawful authority, he disturbs any lawful assembly or meeting of persons; or
5. He obstructs vehicular or pedestrian traffic; or
6. He congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse; or
7. He creates a hazardous or physically offensive condition by any act which serves no legitimate purpose” (Board Review 27).

According to People v. Weaver, 16 N.Y.3d 123 the New York Court of Appeals ruled that, a person can only be guilty of disorderly conduct when a dispute they are having becomes “a potential or immediate public problem.” The court stated that when, “assessing whether an act carries public ramifications, relevant factors to consider are the time and place of the episode under scrutiny; the nature and character of the conduct; the number of other people in the vicinity; whether they are drawn to the disturbance and, if so, the nature and number of those attracted; and any other relevant circumstances” (Board Review 18).

According to Patrol Guide Procedure 200-02 “the Department is committed to accomplishing its mission of protecting the lives and property of all citizens of New York City by treating every citizen with compassion, courtesy, professionalism, and respect, while efficiently rendering police services and enforcing the laws impartially.” In other words, it is improper for officers say discourtesies to civilians (Board Review 12).

According to the Deputy Commissioner of Trial’s ruling for case 2017-17276, NYPD police officers are permitted to use profanity in violent confrontations or sufficiently stressful encounters (Board Review 28).

§ 87(2)(b) dispute with PO Suarez did not cause a crowd to gather, impede pedestrian traffic, or generate any reactions from either of the two passing bystanders. While § 87(2)(b) was cursing and yelling at PO Suarez, such behavior does not rise to the level of disorderly conduct.

§ 87(2)(g)

Civilian and Officer CCRB Histories

- PO Suarez has been a member of service for 17 years (Board Review 19). He has been a subject in seven CCRB complaints and 17 allegations, of which two were substantiated:
 - 201900280 involved substantiated allegations of discourtesy against PO Suarez. The Board recommended Formalized Training and the NYPD imposed Formalized Training.

- § 87(2)(b)
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- § 87(2)(b) [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Mediation, Civil and Criminal Histories

- § 87(2)(b) [REDACTED] rejected mediation (Board Review 21).
- A FOIL request filed with the NYC Comptroller's office indicates that § 87(2)(b) [REDACTED] has not filed a Notice of Claim regarding this incident (Board Review 22).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Squad No.: 8

Investigator: <u>John Jeffrey</u>	Inv. <u>John Jeffrey</u>	<u>12/04/2020</u>
Signature	Print Title & Name	Date

Squad Leader: <u>Ethan De Angelo</u>	IM <u>Ethan De Angelo</u>	<u>3/2/2022</u>
Signature	Print Title & Name	Date

Reviewer: _____	_____	_____
Signature	Print Title & Name	Date